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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.     | CONFIRMATION NO. |
|---|-------------|----------------------|-------------------------|------------------|
| 09/760,879  | 01/17/2001  | Naohito Takae        | 1341.1077 (JDH)         | 4985             |
| 21171   | 7590        | 08/12/2005           | EXAMINER                |                  |
| STAAS & HALSEY LLP<br>SUITE 700<br>1201 NEW YORK AVENUE, N.W.<br>WASHINGTON, DC 20005 |             |                      | RAMOS FELICIANO, ELISEO |                  |
|   |             |                      | ART UNIT                | PAPER NUMBER     |
|   |             |                      | 2687                    |                  |

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 09/760,879             | TAKAE ET AL.        |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Eliseo Ramos-Feliciano | 2687                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 31 March 2005.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3-5,7-9 and 11-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3-5,7-9 and 11-19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 31 March 2005 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

**DETAILED ACTION*****Drawings***

1. The drawings were received on March 31, 2005. These drawings are acceptable.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1, 3-5, 7-9, 11-19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hubbe et al. (US Patent Number 6,278,885) in view of Rignell et al. (US Patent Application publication number 2001/0053688 A1).

Regarding **claim 1**, Hubbe et al. discloses a portable terminal remote control method of remotely controlling a portable terminal (3) from an external device (1, 2, 5) via a wireless communication link (Figure 1), said portable terminal having a main body provided with a built-in memory (second memory – column 5, line 1), and an attachable/detachable storage medium (first memory, e.g. SIM card – column 4, line 65), the method comprising:

accepting a request by said external device related to a change of setting in said portable terminal via the wireless communication link (column 3, lines 27-32); and sending a single setting changing message (short radio message; SMS – abstract; column 3, lines 35-40; column 5, lines 4-9), from said external device to said portable terminal, in response to the accepted request (column 3, lines 27-32), and

wherein the setting changing message includes a computer program (“commands to be acted on” – column 4, line 3; “updating commands” – column 3, lines 27-32) that changes contents of both of the built-in memory and the storage medium of the portable terminal at a time (column 5, lines 2-3), and a setting changing identifier (header 6 – Figure 2) that identifies the setting changing message such that said portable terminal is configured to execute a different function (an update by definition implies a change or different function as claimed; see “adding software” – column 4, line 47) (column 2, lines 26-34).

- In spite of that someone makes the request (which includes a settings change for the portable terminal; Hubbe et al.’s “updating commands”), Hubbe et al. does not specify it is the user of the portable terminal who makes the request. Nevertheless, the manner of operating a device does not differentiate apparatus claim from the prior art (see MPEP 2114).

On the other hand, this feature is conventional in the art as shown by Rignell et al. In the same field of endeavor, Rignell et al. discloses a portable terminal remote control method of remotely controlling a portable terminal (201 – Figure 2) wherein the user of the portable terminal makes the request as claimed (see in particular paragraph 0029).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to enable the user of the portable terminal to make the request instead of or in addition to someone else, first, because the manner of operating a device does not differentiate apparatus claim from the prior art (MPEP 2114), and, second, because users would be capable of performing the changes/updates when necessary, possible, and/or advantageous (e.g. when they have time).

- Even though Hubbe et al. discloses that the setting changing message is, for example, SMS (short message service) message (abstract; column 3, lines 35-40; column 5, lines 4-9), Hubbe et al. fails to specify that the setting changing message is mail (e-mail) as defined by applicant.

In the same field of endeavor, Rignell et al. discloses a portable terminal remote control method of remotely controlling a portable terminal (201 – Figure 2) where either one of SMS or e-mail or any other suitable format can be used to send update/support information/commands enabling the mobile unit to perform an update of the settings in a memory of the mobile unit (see in particular paragraph 0107; see also paragraphs 0037 and 0084). SMS and e-mail are interchangeable as suggested by Rignell et al. Some advantages of e-mail are that it is low cost, and widely available.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use e-mail instead of SMS, first, because SMS and e-mail are interchangeable as suggested by Rignell et al., and, second, because e-mail is low cost, and widely available.

Regarding **claim 3**, Hubbe et al. and Rignell et al. disclose everything claimed as applied above (see *claim 1*). In addition, the combination teaches wherein the sending of the setting changing mail includes, upon acceptance of the request related to the change of setting in said portable terminal, generating the setting changing mail containing a computer program suitable to the received request (column 2, lines 26-34; column 3, lines 27-40; column 4, line 3; column 5, lines 4-9 of Hubbe et al.).

Regarding **claim 4**, Hubbe et al. and Rignell et al. disclose everything claimed as applied above (see *claim 3*). In addition, the combination teaches the upon acceptance of

the request related to the change of setting in said portable terminal from the user of said portable terminal, checking whether or not the user is an authorized user (determine whether unauthorized, unsupported, unlicensed or unofficial – paragraphs 0051-0052 of Rignell et al.).

Regarding **claim 5**, Hubbe et al. discloses a portable terminal remote control method of remotely controlling a portable terminal (3) from an external device (1, 2, 5) via a wireless communication link (Figure 1), said portable terminal having a main body provided with a built-in memory (second memory – column 5, line 1), and an attachable/detachable storage medium (first memory, e.g. SIM card – column 4, line 65), the method comprising:

receiving a single setting changing message (short radio message; SMS – abstract; column 3, lines 35-40; column 5, lines 4-9) sent from said external device in said portable terminal, via the wireless communication link (column 3, lines 27-32), the setting changing message including a computer program (“commands to be acted on” – column 4, line 3; “updating commands” – column 3, lines 27-32) that changes contents of both the built-in memory and the storage medium of the portable terminal at a time (column 5, lines 2-3), and a setting changing identifier (header 6 – Figure 2) that identifies the setting changing mail;

identifying the setting changing message based on the setting changing identifier (header 6 – Figure 2); and

updating the contents of both of said built-in memory and said storage medium based on content of the received setting changing mail such that said portable terminal is configured to execute a different function (an update by definition implies a change or

different function as claimed; see “adding software” – column 4, line 47) (column 2, lines 26-34).

- Even though Hubbe et al. discloses that the setting changing message is, for example, SMS (short message service) message (abstract; column 3, lines 35-40; column 5, lines 4-9), Hubbe et al. fails to specify that the setting changing message is mail (e-mail) as defined by applicant.

In the same field of endeavor, Rignell et al. discloses a portable terminal remote control method of remotely controlling a portable terminal (201 – Figure 2) where either one of SMS or e-mail or any other suitable format can be used to send update/support information/commands enabling the mobile unit to perform an update of the settings in a memory of the mobile unit (see in particular paragraph 0107; see also paragraphs 0037 and 0084). SMS and e-mail are interchangeable as suggested by Rignell et al. Some advantages of e-mail are that it is low cost, and widely available. Rignell et al. further discloses a setting changing identifier (software version number) that identifies the setting changing mail; and identifying the setting changing message based on the setting changing identifier (paragraph 0044, 0077, 0091, etc).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use e-mail instead of SMS, first, because SMS and e-mail are interchangeable as suggested by Rignell et al., and, second, because e-mail is low cost, and widely available.

Regarding **claim 7**, Hubbe et al. and Rignell et al. disclose everything claimed as applied above (see *claim 5*). In addition, the combination teaches wherein said storage medium comprises an IC card or a subscriber identity module card (e.g. SIM card –

column 3, lines 4-5; column 4, line 65) issued by a communication provider (column 3, lines 23-25), each provided with a processor (processing means; microprocessor – column 3, lines 7-10) (17 – Figure 3) and a memory (column 3, lines 7-10) (18 – Figure 3) so that in the collectively updating of the contents, said main body has a processor (11 – Figure 3) that updates the contents of said built-in memory (12 – Figure 3) by executing the computer program contained in said setting changing mail (“commands to be acted on” – column 4, line 3; “updating commands” – column 3, lines 27-32), and said IC card or subscriber identity module card is updated by a processor-to-processor communication between the processor in said main body and the processor in said IC card or in said subscriber identity module card (e.g. SIM card) (column 3, lines 11-15; and citations above of Hubbe et al.).

Regarding **claim 8**, Hubbe et al. and Rignell et al. disclose everything claimed as applied above (see *claim 5*). In addition, the combination teaches storing the received setting changing mail in said built-in memory (column 5, lines 2-3); and when said storage medium is replaced with another storage medium, updating contents of said other storage medium by running the computer program contained in the setting changing mail stored in said built-in memory (single phone can use multiple cards or *vice versa* – column 4, lines 8-14; card memory contents are compared against built-in memory, e.g. buffer, to determine update need – column 4, lines 51-55; and citations above of Hubbe et al.).

Regarding **claim 9**, Hubbe et al. and Rignell et al. disclose everything claimed as applied above (see *claim 5*). In addition, the combination teaches storing the received setting changing mail said storage medium (column 5, lines 2-3); and when said storage

medium is inserted into a main body of another portable terminal, updating contents in a built-in memory of said mail body of the other portable terminal by running the computer program contained in the setting changing mail stored in said storage medium (single card can be used in multiple phones or *vice versa* – column 4, lines 8-14; card memory contents are compared against built-in memory, e.g. buffer, to determine update need – column 4, lines 51-55; and citations above of Hubbe et al.).

In general, **claims 11-19** are obvious variations of **claims 1, 3-5, 7-9**; therefore, they rejected for the same reasons shown above. In particular:

As to **claims 11 and 12**, they are the corresponding system and recording medium claims of method *claim 1*; therefore, they are rejected for the same reasons applied above for *claim 1*.

As to **claim 13**, it is a corresponding system claim of method *claim 5*; therefore, it is rejected for the same reasons applied above for *claim 5*.

As to **claims 14 and 18-19**, they are obvious variation method claims corresponding to method *claim 1*; therefore, they are rejected for the same reasons applied above for *claim 1*.

As to **claims 15 and 16**, they are the corresponding system and recording medium claims of method *claim 14*; therefore, they are rejected for the same reasons applied above for *claim 14*.

As to **claim 17**, it is a corresponding system claim of method *claim 4/3/1*; therefore, it is rejected for the same reasons applied above for *claim 4/3/1*.

4. **Claims 1, 3-5, 7-9, 11-19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hubbe et al. (US Patent Number 6,278,885) in view of Hägebarth (US Patent Number 6,484,026).

Regarding **claim 1**, Hubbe et al. discloses a portable terminal remote control method of remotely controlling a portable terminal (3) from an external device (1, 2, 5) via a wireless communication link (Figure 1), said portable terminal having a main body provided with a built-in memory (second memory – column 5, line 1), and an attachable/detachable storage medium (first memory, e.g. SIM card – column 4, line 65), the method comprising:

accepting a request by said external device related to a change of setting in said portable terminal via the wireless communication link (column 3, lines 27-32); and

sending a single setting changing message (short radio message; SMS – abstract; column 3, lines 35-40; column 5, lines 4-9), from said external device to said portable terminal, in response to the accepted request (column 3, lines 27-32), and

wherein the setting changing message includes a computer program (“commands to be acted on” – column 4, line 3; “updating commands” – column 3, lines 27-32) that changes contents of both of the built-in memory and the storage medium of the portable terminal at a time (column 5, lines 2-3), and a setting changing identifier (header 6 – Figure 2) that identifies the setting changing message such that said portable terminal is configured to execute a different function (an update by definition implies a change or different function as claimed; see “adding software” – column 4, line 47) (column 2, lines 26-34).

- In spite of that someone makes the request (which includes a settings change for the portable terminal; Hubbe et al.’s “updating commands”), Hubbe et al. does not specify it is the user of the portable terminal who makes the request. Nevertheless, the manner of operating a device does not differentiate apparatus claim from the prior art (see MPEP 2114).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to enable the user of the portable terminal to make the request instead of or in addition to someone else, first, because the manner of operating a device does not differentiate apparatus claim from the prior art (MPEP 2114), and, second, because users would be capable of performing the changes/updates when necessary, possible, and/or advantageous (e.g. when they have time).

- Even though Hubbe et al. discloses that the setting changing message is, for example, SMS (short message service) message (abstract; column 3, lines 35-40; column 5, lines 4-9), Hubbe et al. fails to specify that the setting changing message is mail (e-mail) as defined by applicant.

In the same field of endeavor, Hägebarth discloses a portable terminal remote control method of remotely controlling a portable terminal (abstract) where either one of SMS or e-mail can be used to send update/performance parameters/commands (settings) enabling the mobile unit to perform an update of the settings in a memory of the mobile unit (see in particular column 6, lines 34-41; see also column 7, lines 35-38). SMS and e-mail are interchangeable as suggested by Hägebarth. Some advantages of e-mail are that it is low cost, and widely available.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use e-mail instead of SMS, first, because SMS and e-mail are interchangeable as suggested by Hägebarth, and, second, because e-mail is low cost, and widely available.

Regarding **claim 3**, Hubbe et al. and Hägebarth disclose everything claimed as applied above (see *claim 1*). In addition, the combination teaches wherein the sending of the setting changing mail includes, upon acceptance of the request related to the change of setting in said portable terminal, generating the setting changing mail containing a computer program suitable to the received request (column 2, lines 26-34; column 3, lines 27-40; column 4, line 3; column 5, lines 4-9 of Hubbe et al.).

Regarding **claim 4**, Hubbe et al. and Hägebarth disclose everything claimed as applied above (see *claim 3*). In addition, the combination teaches the upon acceptance of the request related to the change of setting in said portable terminal from the user of said portable terminal, checking whether or not the user is an authorized user (verify customer's identity – column 5, lines 1-6 of Hägebarth).

Regarding **claim 5**, Hubbe et al. discloses a portable terminal remote control method of remotely controlling a portable terminal (3) from an external device (1, 2, 5) via a wireless communication link (Figure 1), said portable terminal having a main body provided with a built-in memory (second memory – column 5, line 1), and an attachable/detachable storage medium (first memory, e.g. SIM card – column 4, line 65), the method comprising:

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terminal, via the wireless communication link (column 3, lines 27-32), the setting changing message including a computer program (“commands to be acted on” – column 4, line 3; “updating commands” – column 3, lines 27-32) that changes contents of both the built-in memory and the storage medium of the portable terminal at a time (column 5, lines 2-3), and a setting changing identifier (header 6 – Figure 2) that identifies the setting changing mail;

identifying the setting changing message based on the setting changing identifier (header 6 – Figure 2); and

updating the contents of both of said built-in memory and said storage medium based on content of the received setting changing mail such that said portable terminal is configured to execute a different function (an update by definition implies a change or different function as claimed; see “adding software” – column 4, line 47) (column 2, lines 26-34).

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In the same field of endeavor, Hägebarth discloses a portable terminal remote control method of remotely controlling a portable terminal (abstract) where either one of SMS or e-mail can be used to send update/performance parameters/commands (settings) enabling the mobile unit to perform an update of the settings in a memory of the mobile unit (see in particular column 6, lines 34-41; see also column 7, lines 35-38). SMS and e-

mail are interchangeable as suggested by Hägebarth. Some advantages of e-mail are that it is low cost, and widely available.

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to use e-mail instead of SMS, first, because SMS and e-mail are interchangeable as suggested by Hägebarth, and, second, because e-mail is low cost, and widely available.

Regarding **claim 7**, Hubbe et al. and Hägebarth disclose everything claimed as applied above (see *claim 5*). In addition, the combination teaches wherein said storage medium comprises an IC card or a subscriber identity module card (e.g. SIM card – column 3, lines 4-5; column 4, line 65) issued by a communication provider (column 3, lines 23-25), each provided with a processor (processing means; microprocessor – column 3, lines 7-10) (17 – Figure 3) and a memory (column 3, lines 7-10) (18 – Figure 3) so that in the collectively updating of the contents, said main body has a processor (11 – Figure 3) that updates the contents of said built-in memory (12 – Figure 3) by executing, the computer program contained in said setting changing mail (“commands to be acted on” – column 4, line 3; “updating commands” – column 3, lines 27-32), and said IC card or subscriber identity module card is updated by a processor-to-processor communication between the processor in said main body and the processor in said IC card or in said subscriber identity module card (e.g. SIM card) (column 3, lines 11-15; and citations above of Hubbe et al.).

Regarding **claim 8**, Hubbe et al. and Hägebarth disclose everything claimed as applied above (see *claim 5*). In addition, the combination teaches storing the received setting changing mail in said built-in memory (column 5, lines 2-3); and when said

storage medium is replaced with another storage medium, updating contents of said other storage medium by running the computer program contained in the setting changing mail stored in said built-in memory (single phone can use multiple cards or *vice versa* – column 4, lines 8-14; card memory contents are compared against built-in memory, e.g. buffer, to determine update need – column 4, lines 51-55; and citations above of Hubbe et al.).

Regarding **claim 9**, Hubbe et al. and Hägebarth disclose everything claimed as applied above (see *claim 5*). In addition, the combination teaches storing the received setting changing mail said storage medium (column 5, lines 2-3); and when said storage medium is inserted into a main body of another portable terminal, updating contents in a built-in memory of said mail body of the other portable terminal by running the computer program contained in the setting changing mail stored in said storage medium (single card can be used in multiple phones or *vice versa* – column 4, lines 8-14; card memory contents are compared against built-in memory, e.g. buffer, to determine update need – column 4, lines 51-55; and citations above of Hubbe et al.).

In general, **claims 11-19** are obvious variations of **claims 1, 3-5, 7-9**; therefore, they rejected for the same reasons shown above. In particular:

As to **claims 11 and 12**, they are the corresponding system and recording medium claims of method *claim 1*; therefore, they are rejected for the same reasons applied above for *claim 1*.

As to **claim 13**, it is a corresponding system claim of method *claim 5*; therefore, it is rejected for the same reasons applied above for *claim 5*.

As to **claims 14 and 18-19**, they are obvious variation method claims corresponding to method *claim 1*; therefore, they are rejected for the same reasons applied above for *claim 1*.

As to **claims 15 and 16**, they are the corresponding system and recording medium claims of method *claim 14*; therefore, they are rejected for the same reasons applied above for *claim 14*.

As to **claim 17**, it is a corresponding system claim of method *claim 4/3/1*; therefore, it is rejected for the same reasons applied above for *claim 4/3/1*.

#### ***Response to Arguments***

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the

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advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication from the examiner should be directed to Eliseo Ramos-Feliciano whose telephone number is 571-272-7925. The examiner can normally be reached from 8:00 a.m. to 5:30 p.m. on 5-4/9 1st Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lester G. Kincaid, can be reached on (571) 272-7922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



ELISEO RAMOS-FELICIANO  
PATENT EXAMINER

ERF/erf

August 8, 2005